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of the Supreme Judicial Court
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MEMORANDUM

NOVEMBER 2, 2018

RE: Supreme Judicial Court No. BD-2018-052
In re: Laura Marshard – B.B.O. NO. 558412

FROM: Joseph Berman
Board General Counsel

Enclosed please find a copy of the **Order of Term Suspension with Memorandum of Decision** in re: **Laura Marshard** whose registration address according to his/her latest records with the Board of Bar Overseers is given below.

Please be advised that this material is being circulated as a news item. The Board is not requesting the printing of a legal notice.

ADDRESS: P.O. Box 445
Barnstable, MA 02630



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: BD-2018-052

IN RE: Laura Marshard

ORDER OF TERM SUSPENSION

This matter came before the Court, Cypher, J., on an Information and Record of Proceedings pursuant to S.J.C. Rule 4:01, § 8(6), with the Recommendation and Vote of the Board of Bar Overseers (Board) filed by the Board on June 19, 2018. After a hearing was held on September 12, 2018, attended by assistant bar counsel and the lawyer, and in accordance with the Memorandum of Decision of this date;

It is ORDERED that:

1. Laura Marshard is hereby suspended from the practice of law in the Commonwealth of Massachusetts for a period of one (1) month. The Continuing Legal Education (CLE) requirements imposed by the Board have been satisfied by the lawyer.

In accordance with S.J.C. Rule 4:01, § 17(3), the suspension shall be effective thirty (30) days after the date of

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THE COUNTY OF SUFFOLK

the entry of this Order. The lawyer, after the entry of this Order, shall not accept any new retainer or engage as a lawyer for another in any new case or legal matter of any nature. During the period between the entry date of this Order and its effective date, however, the lawyer may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

It is FURTHER ORDERED that:

2. Within fourteen (14) days of the date of entry of this Order, the lawyer shall:

a) file a notice of withdrawal as of the effective date of the suspension with every court, agency, or tribunal before which a matter is pending, together with a copy of the notices sent pursuant to paragraphs 2(c) and 2(d) of this Order, the client's or clients' place of residence, and the case caption and docket number of the client's or clients' proceedings;

b) resign as of the effective date of the suspension all appointments as guardian, executor, administrator, trustee, attorney-in-fact, or other fiduciary, attaching to the resignation a copy of the notices sent to the wards, heirs, or beneficiaries pursuant to paragraphs 2(c) and 2(d) of this Order, the place of residence of the wards, heirs, or beneficiaries, and the case caption and docket

number of the proceedings, if any;

c) provide notice to all clients and to all wards, heirs, and beneficiaries that the lawyer has been suspended; that she is disqualified from acting as a lawyer after the effective date of the suspension; and that, if not represented by co-counsel, the client, ward, heir, or beneficiary should act promptly to substitute another lawyer or fiduciary or to seek legal advice elsewhere, calling attention to any urgency arising from the circumstances of the case;

d) provide notice to counsel for all parties (or, in the absence of counsel, the parties) in pending matters that the lawyer has been suspended and, as a consequence, is disqualified from acting as a lawyer after the effective date of the suspension;

e) make available to all clients being represented in pending matters any papers or other property to which they are entitled, calling attention to any urgency for obtaining the papers or other property;

f) refund any part of any fees paid in advance that have not been earned; and

g) close every IOLTA, client, trust or other fiduciary account and properly disburse or otherwise transfer all client and fiduciary funds in her possession,

custody or control.

All notices required by this paragraph shall be served by certified mail, return receipt requested, in a form approved by the Board.

3. Within twenty-one (21) days after the date of entry of this Order, the lawyer shall file with the Office of the Bar Counsel an affidavit certifying that the lawyer has fully complied with the provisions of this Order and with bar disciplinary rules. Appended to the affidavit of compliance shall be:

a) a copy of each form of notice, the names and addresses of the clients, wards, heirs, beneficiaries, attorneys, courts and agencies to which notices were sent, and all return receipts or returned mail received up to the date of the affidavit. Supplemental affidavits shall be filed covering subsequent return receipts and returned mail. Such names and addresses of clients shall remain confidential unless otherwise requested in writing by the lawyer or ordered by the court;

b) a schedule showing the location, title and account number of every bank account designated as an IOLTA, client, trust or other fiduciary account and of every account in which the lawyer holds or held as of the entry date of this Order any client, trust or fiduciary funds;

c) a schedule describing the lawyer's disposition of all client and fiduciary funds in the lawyer's possession, custody or control as of the entry date of this Order or thereafter;

d) such proof of the proper distribution of such funds and the closing of such accounts as has been requested by the bar counsel, including copies of checks and other instruments;

e) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and

f) the residence or other street address where communications to the lawyer may thereafter be directed.

The lawyer shall retain copies of all notices sent and shall maintain complete records of the steps taken to comply with the notice requirements of S.J.C. Rule 4:01, § 17.

4. Within twenty-one (21) days after the entry date of this Order, the lawyer shall file with the Clerk of the Supreme Judicial Court for Suffolk County:

a) a copy of the affidavit of compliance required by paragraph 3 of this Order;

b) a list of all other state, federal and administrative jurisdictions to which the lawyer is admitted to practice; and

c) the residence or other street address where
communications to the lawyer may thereafter be directed.

5. The lawyer's reinstatement to the practice of law
in the Commonwealth shall be contingent upon her filing of an
affidavit of compliance pursuant to S.J.C. Rule 4:01, § 18(1).

By the Court, (Cypher, J.) *qB*

Maura S. Doyle
Maura S. Doyle, Clerk

Entered: October 22, 2018

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. BD-2018-052

IN RE: LAURA MARSHARD

CORRECTED MEMORANDUM OF DECISION

This matter came before the court, Cypher, J., on an Information filed by the Board of Bar Overseers (board) under S.J.C. Rule 4:01, § 8 (6), regarding the character and conduct of the respondent, Laura Marshard, who was admitted to the bar of the Commonwealth on May 20, 1991. The respondent was charged with three counts of violating disciplinary rules. The hearing committee determined that the respondent had only violated Mass. R. Prof. C. 4.2 and S.J.C. Rule 4:01, § 8.4 (d), when she met with a represented witness without the witness's attorney. The board affirmed the hearing committee's decision that the respondent did not violate the Rules of Professional Conduct as charged in counts 1 and 3 and agreed that she violated the rules as charged in count 2.

The board has recommended that the respondent be suspended from the practice of law for one month and be required to attend a continuing legal education course (CLE) approved by the Office of Bar Counsel. The respondent has accepted the one-month suspension and has attended two courses, which she contends directly relate to the ethical issues that were the subject of the suspension. The respondent requested that Bar Counsel approve at least one of the courses and deem her CLE requirement satisfied. Bar Counsel has declined this request, on the grounds that the courses were conducted by the respondent's office or attended on-line and the sanctions were unlikely to instill confidence in the system of justice.

It is undisputed that the respondent participated in the following two courses:

(1) On June 14, 2018, the Cape & Islands District Attorney Michael O'Keefe hosted a course entitled "Ethical Considerations Training." The course was sponsored by the National Association of Attorneys General. There were three speakers at the course, Tigran Eldred, Professor of Law, New England School of Law; Brendan Ruane, Professional Development Consultant and Lead Instruction, National Attorneys General Training and Research Institute; and Judy Zeprun Kalman, General Counsel, Massachusetts Attorney General's Office. None of the instructors was affiliated with the District Attorney's Office.

The instructors made presentations totaling 4.25 ethics hours. The course provided the attendees with reference and resource materials and a Uniform Certificate of Attendance. Participants were able to ask questions. The agenda from the course indicates that the topics covered included: conflicts (Rules 1.7 - 1.11); discovery (Rule 3.8); witness preparation (Rule 3.4); ex parte communication (Rule 4.2); deception by law enforcement (Rule 8.4); defense ethics in plea bargaining (Rules 3.3, 3.4) and ethics of jury selection (Rules 3.6, 4.4).

(2) On July 31, 2018, the respondent participated in an on-line webinar sponsored by Massachusetts Continuing Legal Education (MCLE) entitled "Criminal Law Ethical Landmines." The program was chaired by the then chair of the Board of Bar Overseers and the assistant bar counsel prosecuting this matter was one of the speakers. There were also instructors from the Suffolk County District Attorney's office, the Attorney General's Office, and an attorney in private practice. The course qualified for 3.0 ethics hours and the respondent received a signed certificate of attendance.

The agenda from the course indicates that the topics covered included: Applicable Rules of Professional Conduct and Case Law; Common Ethical Issues Encountered in Criminal

Practice; Best Practices for Handling Ethical Issues; What To Do When You Get In Trouble; Transitions: How to Approach Ethics When Your Practice Changes, and a discussion of hypothetical problems and questions and answers.

The advertisement for the course offered an option for participants to view the course on-line, either live or after it had been broadcast.

Discussion. The only issue before me is whether the courses attended by the respondent satisfy the education requirement established by the board. With regard to the requirements of the course, the board specified only that the respondent be reinstated "conditioned on the successful completion of a legal ethics class approved by bar counsel." The respondent's lawyer requested from Bar Counsel approval of either one of the classes as satisfaction of the CLE requirement. Counsel for the respondent provided Bar Counsel with the program information for the two classes. Bar Counsel declined to provide such approval and proposed that the respondent attend a Suffolk University Law School class in one of their clinical programs. Counsel for the respondent sought clarification and Bar Counsel advised her that she "did not think that bar counsel should approve a course sponsored by the Cape and Island DA's office" as she thought such a course would be "very unlikely to instill confidence in the system of justice as sanctions are meant to do." Bar Counsel indicated that the MCLE course "might be better in terms of the impact of the sanction, the course is not live, and so would not allow someone taking it now to explore her thinking with faculty and students." Bar Counsel expressed concern that neither program was sufficiently directed to the ethical issues presented in the disciplinary case to be approved by Bar Counsel for purposes of the sanction.

The parties appeared before me for oral argument on September 12, 2018. At oral argument, Bar Counsel indicated that part of the reason she did not deem the courses that the

respondent attended adequate was because one was sponsored by the District Attorney's office and the other one was on-line.

After oral argument, review of the record, and review of the material provided regarding the courses attended by the respondent, I am persuaded that the program organized by the Cape and Island's District Attorney's office was independent of the control of the District Attorney. The speakers were all experts in their fields and did not work for the District Attorney. The District Attorney hosted the program on his own initiative for his entire office and not just for the respondent. The District Attorney was not required to provide this training and should be commended for such an initiative. It also appears, contrary to Bar Counsel's conclusion, that the topics covered in the training directly addressed the ethical issues presented in the matter. I conclude that the program hosted by the Cape and Island's District Attorney and sponsored by the National Association of Attorneys General fulfilled the education requirement established by the board and that Bar Counsel should not have withheld approval of this program.

I am also persuaded that the MCLE program that the respondent attended on-line satisfied the education requirement. Bar Counsel's reasoning that because the course was on-line it was inadequate is contradicted by the fact that the program was advertised as: taught, in part, by Bar Counsel; available on-line; and as providing up to three CLE ethics credits.

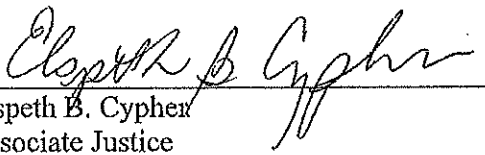
At oral argument, Bar Counsel stated that the ease of taking the courses the respondent completed was not sufficient punishment. The one-month suspension was a punishment. The educational component of the sanction is corrective in nature and is not a punishment. Whether such a class is sufficiently inconvenient is not an appropriate consideration. Bar Counsel does not appear to appreciate the significant commuting difficulty for an attorney living on Martha's

Vineyard to attend, in person, a rarely offered course in Boston. I am also persuaded that the MCLE course sufficiently addressed the ethical issues of concern to the board. Additionally, the only alternative course proposed by Bar Counsel as adequate was one that she herself was teaching at Suffolk University Law School.

The respondent accepted responsibility for the ethical violation found by the board, accepted the sanction imposed by the board of a one-month suspension, and participated in two different ethics programs, that I find sufficiently addressed the concerns of the board.

Conclusion. Having considered the underlying facts, the respondent's acceptance of responsibility and acceptance of the sanction, as well as considering discipline imposed in other cases, I conclude that the one-month suspension was appropriate and that the courses attended by the respondent satisfy the CLE requirement imposed by the board. The respondent may petition for reinstatement upon filing an affidavit of compliance.

By the Court,


Elspeth B. Cypher
Associate Justice

ENTERED NUNC PRO TUNC: October 22, 2018